IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1908 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANILAL MAVJI NINAMA

Versus

COMMISSIONER OF POLICE

Appearance:

MR AM PAREKH for Petitioner

MR KT DAVE Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad passed an order on November 19, 1999 in exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act, for short) detaining Manilal Mavjibhai Ninama of

Memnagar, Ahmedabad under the provisions of the PASA Act.

2. The detaining authority took into consideration 12 registered cases against the detenu for the offence of theft. The detaining authority also took into consideration two statements of anonymous witnesses in respect of the incidents that occurred on July 7, 1999 and July 21, 1999. After considering the less drastic remedy, the detaining authority came to the conclusion that in order to prevent the petitioner from pursuing his illegal activities detrimental to the public order, he is required to immediately detained under the PASA Act.

3. The detenu challenges the order of detention on various grounds, however, Mr Parekh, learned advocate for the petitioner, submitted that the statements of the anonymous witnesses in respect of whom powers under sec. 9(2) of the PASA Act are exercised are seen and they are recorded by the sponsoring authority on November 19, 1999. They are verified by the detaining authority on that very day and the order is also passed on that very day. He, therefore, urged that there is improper exercise of powers under sec. 9(2) of the PASA Act. As regards the registered offences, Mr Parekh submitted that all the cases relate to an offence of theft. There is nothing to indicate any disturbance to public order and therefore,these offences could not have formed the basis for recording a satisfaction about the activities of the detenu being detrimental to the public order. Mr Parekh therefore, submits that the petition may be allowed and the order in question may be quashed and set aside.

4. Mr KT Dave, learned AGP has opposed this petition.

5. Having regard to the rival side contentions, it may be noted that the statements of anonymous witnesses were recorded on November 19, 1999, the same has been verified by the detaining authority on that very day and the order in question is passed also on that very day i.e. November 19, 1999. The entire exercise of recording of statements, making of proposal, calling of the witnesses, verification of statements and passing of the order is undertaken in one single day. While exercising powers under sec. 9(2) of the PASA Act, the detaining authority has to satisfy itself about the correctness and genuineness of the fear expressed by the witnesses claiming protection of anonymity for that purpose, the detaining authority is expected to undertake the exercise of considering the back ground, antecedents and the character of the detenu. The authority is also

expected to take into consideration the contemporaneous material. In the instant case, the detaining authority has not filed affidavit in reply. There is no contemporaneous material to indicate undertaking of any such exercise by the detaining authority. The exercise of powers under sec. 9(2) of the PASA Act, therefore, cannot be considered as proper. (Bai Amina vs. State of Gujarat, 1981, GLR P.1186). The right of the detenu of making an effective representation is therefore, adversely affected which would vitiate the detention.

6. So far as the registered offences are concerned, they all with regard to offence of theft. Going through the compilation of the papers in respect of these offences, there appears nothing to indicate any disturbance to public order. At the most it may be said to have affected the law and order situation. The subjective satisfaction recorded by the detaining authority that the activities of the detenu are detrimental to the public order, therefore, cannot be said to be genuine.

7. The out come of the above discussion is that the order of detention cannot be upheld. The petition deserves to be allowed and the same is allowed. The impugned order of detention passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 19.11.1999 in respect of Manilal Mavji Ninama is hereby quashed and set aside. The detenu be set at liberty forthwith, if not required for any other case. Rule is made absolute with no order as to costs. DS Permitted.

(A.L. DAVE, J.)

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